IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 5998 of 2007()

CRIME NO.287/07 OF WADAKKANCHERY POLICE STATION

PETITIONER/ACCUSED

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1. SATHEESH, S/O.CHINNU,
   CHATHAN CHIRA COLONY-4, KANJIRAKODE VILLAGE,
   KODUMBU DESOM.

2. SANOJ, S/O.CHANDRAN,
   THOPPIL VALAPPIL HOUSE, DO.

3. SATHEESH, S/O.CHANDRAN,
   THOPPIL VALAPPIL HOUSE, DO.

4. SUBRAMANYAN, S/O.KUNJAYYARIAN,
   CHATHAN COLONY, DO.

5. RAJESH, S/O.AYYAPPAN KUTTY,
   CHATHAN CHIRA COLONY, DO.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 5998 OF 2007

Dated this the 8th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners are accused in a crime registered initially under Sec.324 read with Sec. 149 of the IPC subsequently, in the course of investigation, allegation under Sec.326 of the IPC has been included. According to the petitioners, they are absolutely innocent. The learned counsel for the petitioners prays that anticipatory bail may be granted to the petitioners.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the incident is an off-shoot of political rivalry between the B.J.P. and CPI(M). Moreover, investigation is already complete now. Final report has already been filed. In these circumstances, it is for the petitioners to appear before the learned Magistrate and seek

regular bail. There are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

3. I find merit in the opposition by the learned Public Prosecutor. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision

reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge